ard, 14 Tex. 356; *Reed v. Reed*, Wright 224 (Ohio). Desertion will begin at the time when a renewal of marital cohabitation is sought by the complainant. *Hankinson v. Hankinson*, 33 N. J. 66. But there are circumstances in which the law will justify a refusal to return. *Porritt v. Porritt*, 18 Mich. 420. The guilty intent is manifested when, without cause or consent, either party separates from the other, *Ingersoll v. Ingersoll*, 49 Pa. 249; and this has been held notwithstanding the husband contributed to his wife's support. *Magrath v. Magrath*, 103 Mass. 577. The conduct of the defendant may justify a finding of willful, continued, and obstinate desertion. *Carroll v. Carroll*, 68 N. J. Eq. 727.

EVIDENCE—JUDICIAL NOTICE—SCIENTIFIC FACTS.—MACOMER V. STATE BOARD OF HEALTH, 65 ATL. 263 (R. I.).—In an action to revoke a certificate to practice medicine evidence was introduced that the practitioner had advertised to produce certain results and cure of diseases with alleged electrical devices. *Held*, That the court could not take judicial notice that such claims were false but was bound to form its judgment on matters solely in evidence. Blodgett, J. *dissenting*.

The court is bound to take judicial notice of all matters of art and science which because of their public notoriety have been rendered axiomatic, *Bryan v. Beckley*, 12 Am. Dec. 216 (Ky.); even though the court may be actually uninformed regarding them. *Brown v. Piper*, 91 U. S. 37. But this power is exercised with great care and caution and every reasonable doubt resolved promptly in the negative. *St. Louis Gas Co. v. Am. Fire Ins. Co.*, 33 Mo. App. 348.

EVIDENCE—PAROL EVIDENCE EXPLAINING WRITINGS.—LAMBERT HOISTING ENGINE CO. V. CARMODY, 65 ATL. 141 (CT.).—*Held*, that on an issue as to whether a written contract was one for the sale of certain machinery or a lease thereof it was proper to admit evidence of negotiations leading up to the contract, for the purpose of determining the intent and purpose of the parties.

Parol evidence of the practical interpretation which the parties have by their conduct given to a written instrument is admissible in determining the intent and purpose of the contract. *St. Louis Gas Light Co. v. City of St. Louis*, 46 Mo. 121; *Emery v. Webster*, 42 Me. 204. And the statements and conduct leading up to the contract, *Rhodes v. Cleveland Rolling-Mill Co.*, 17 Fed. 426, as well as subsequent to it, *Potter v. Phoenix Ins. Co.*, 63 Fed. 382, and, in fact, where the direct evidence is contradictory as to the exact terms of the instrument, evidence of any circumstance bearing upon the point in controversy may be introduced to show the understanding of the terms by the parties. *Houghton v. Clough, et al.*, 30 Vt. 312. But the understanding which one party had, if not communicated to the other party, is not admissible, *Taft v. Dickinson*, 88 Mass. 553. The language mutually chosen to express the intention of their minds can be merely explained by parol evidence—"The question is not what did the parties mean to say, but what is the meaning of what they have said." *Bartholomew v. Muzzy*, 61 Conn., 387.

HIGHWAYS—PERSON CROSSING FROM STREET CAR TO CURB—CONTRIBUTORY NEGLIGENCE—GARSIDE V. N. Y. TRANSP. CO., 146 FED. 588 (N. Y.).—Plaintiff alighted from a street car, and after taking two or three steps was struck and injured by the defendant's automobile. *Held*, that the plaintiff was not bound as a matter of law to look in both directions along the street before starting to cross to the curb, but the question, whether the failure to so look, constitutes contributory negligence is one of fact for the jury.

Some of the Western and Southern states agree that a greater degree of diligence must be exercised by the driver of vehicles at a street crossing than is required of pedestrians. *Carter v. Chambers*, 79 Ala. 223; *Sykes v. Lawlor*, 49 Cal. 236. The general rule in this country and in England is, however, that their rights and obligations are correlative and each owes the other a duty to avoid accident. *Reens v. Mail & Express Put. Co.*, 30 N. Y. Supp. 913; *Baker v. Fehr*, 97 Pa. 70. And if such pedestrian crosses a city street where moving vehicles are numerous without looking in both directions along the street and is injured, he may be guilty of contributory negligence. *Barker v. Savage*, 45 N. Y. 191; *Belton v. Baxter*, 54 N. Y. 245. But if the plaintiff by the use of ordinary care, under the circumstances might have avoided the consequences of the defendant's negligences, and did not, the case is one of mutual fault and no recovery is allowed. *Cooley on Torts*, 2d Ed. p. 812 and cases cited; *Murphy v. Deane*, 101 Mass. 455. Yet, if the defendant discovered the negligence of the plaintiff in time, and by the use of ordinary care could have prevented the injury and did not do so, an action will lie against him. *Thomp. on Neg.* Vol. II., 1157. To have this rule apply, however, the negligence of the one must be subsequent to that of the other. *Bigelow on Torts*, 311; *Beach on Cont. Neg.*, 59. In all such cases this question of contributory negligence is generally one of fact for the jury. *Orr v. Garabold*, 85 Ga. 373; *Peltier v. Bradley Darn v. Carrington Co.*, 67 Conn. 42.

INDICTMENT AND INFORMATION—CONVICTION OF LESSER OFFENCE—STATUTORY PROVISIONS—STATE V. MATTHEWS, 55 S. E. 342 (N. C.)—*Held*, that under an indictment for murder in the first degree, the jury may find accused guilty of murder in the second degree.

Under an indictment for murder in the first degree, the accused may be convicted of any degree of murder, or manslaughter, for the unlawful killing of the identical person charged by the identical means charged in the indictment. *Keefe v. The People*, 40 N. Y. 384. One indicted in the usual form for murder may be convicted of manslaughter, because, if the averment that the killing was with malice aforethought be negatived or stricken from the indictment, there remains a sufficient charge of manslaughter. *Giskie v. The State*, 71 Wis. 612. Wherever a person is charged upon information with the commission of an offence under one section of the statutes, and the offence charged includes another offence under another section of the statutes, the defendant may be found guilty of either offence. *State v. Burwell*, 34 Kan. 312.

INSURANCE—SUICIDE BY THE INSURED—VALIDITY OF PROVISION—THAXTON V. METROPOLITAN INSURANCE CO., 55 S. E. 419. *Held*, A provision in an insurance policy that if the insured, within one year from its issue, die by his own hand, whether sane or insane, the company shall be liable only for the premium paid, is valid. Walker, J., *dissenting*.

Where one person kills himself when his reasoning faculties were so impaired that he was unable to understand the consequence and effect of his act, or was impelled thereto by an irresistable insane impulse, the beneficiaries under the policy could maintain an action and the clause in the policy is void. *Mutual Life Insurance Co. v. Walden*, 26 S. W. 10, 12; *Insurance Company v. Akens*, 150 U. S. 468. When one intentionally drowned himself with the knowledge of the consequence of the deed, the beneficiary could main-